

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IZETT MANUFACTURING, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
LASER GOLF CORPORATION, et al.	:	NO. 98-858

MEMORANDUM AND ORDER

Fullam, Sr. J. May , 1999

Correspondence submitted to the Court by all counsel discloses that the parties have agreed upon a settlement of this case. Although it is clear that plaintiff (a closely-held corporation, acting through its principal) negotiated and is satisfied with the settlement, plaintiff's counsel of record disagrees with his client on this issue, and has now filed a motion for leave to withdraw his appearance because of that disagreement. Counsel for defendants has explained that, in these circumstances, it is not feasible to submit a formal stipulation of dismissal, signed by all counsel. Rather, the Court is asked to enter an order requiring all counsel to sign a stipulation of dismissal.

Accompanying the motion of plaintiff's counsel for leave to withdraw is a further motion, asking this Court (1) to direct the parties to pay any remaining unpaid settlement sums into the Registry of the Court; and (2) to impose a charging lien against such settlement funds for the unpaid bills of plaintiff's

counsel for legal services in this matter.

Local Rule 41.1(b) of this court authorizes the Court to dismiss an action (with prejudice and without costs) whenever the Court is notified that the action has been settled. It is clear that this action has indeed been settled. Defense counsel have so informed the Court, correspondence from plaintiff's counsel acknowledges that fact, and the Court has been supplied with the settlement agreement, duly executed by all parties. This action will therefore be dismissed, pursuant to Local Rule 41.1(b), without the necessity of a further formal stipulation.

The only remaining question is whether plaintiff's counsel of record, now withdrawing from representation, is entitled to a charging lien. Counsel allege that they have not been paid for their services, or at least not paid in full; and their erstwhile client apparently agrees, and has promised to make good that deficiency in the near future.

I shall assume, without firmly deciding, that this Court has jurisdiction, at least to some limited extent, to resolve fee disputes between counsel and client in a case pending before the Court. See F. Novinger v. E.I. duPont de Nemours & Co., 809 F.2d 212, 217 (3d Cir. 1987). But, under Pennsylvania law, the right of an attorney to assert a charging lien arises only if specified conditions are met: (1) there must be a fund in court, or within the court's control under equitable principles;

(2) the fund must have been produced, in substantial part at least, by the efforts of counsel claiming the lien; (3) it must be established that it was understood and agreed between counsel and client that the attorney would look to the fund for payment of his fees; and (4) equitable considerations support recognition of the lien. See Recht v. Urban Redevelopment Auth. Of the City of Clairton, 402 Pa. 599, 168 A.2d 134 (1961) (collecting and reviewing Pennsylvania cases.) In the present case, claimant counsel cannot satisfy the third requirement, since there is no suggestion or evidence that plaintiff's law firm was expected to look to the proceeds of the litigation for its fee and expenses. On the contrary, it is clear that plaintiff's counsel has been billing the client periodically; that the bills have remained unpaid for some time; and that the amounts of the bills bear no relation to the amount of the recovery. In short, this was clearly not a contingent-fee representation. There is thus no basis for asserting a charging lien against the settlement proceeds, or for directing that they be paid into the Registry of the Court. Plaintiff's counsel is, of course, free to pursue contractual remedies in the appropriate court.

An Order follows.

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ORDER

AND NOW, this day of May, 1999, IT IS ORDERED that:

1. Pursuant to Local Rule of Civil Procedure 41.1(b), this action is DISMISSED WITH PREJUDICE, without costs, pursuant to the agreement of the parties.

2. The application of the law firm of Butera, Beausang, Cohen & Brennan to enforce an equitable charging lien for legal services is DENIED, WITHOUT PREJUDICE to the right to pursue their remedies for collection of the alleged debt.

3. The application of the law firm of Butera, Beausang, Cohen & Brennan for leave to withdraw as counsel is GRANTED.

The Clerk is directed to close the file.

John P. Fullam, Sr. J.